

SUMMONS ISSUED

FILED

IN CLERK'S OFFICE

U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

★ JAN 11 2012 ★

-----x
LONG ISLAND OFFICE

RONALD RUSSO

Plaintiff,

COMPLAINT AND
DEMAND FOR JURY TRIAL

-against-

RUBIN & ROTHMAN LLC

Defendant.

-----x
CV-12 0138

**WEXLER, J.
TOMLINSON, M**

Plaintiff by and through his attorney Kleinman LLC, complaining of the Defendant,
respectfully alleges and shows to the Court as follows:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for
Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. section 1692
et seq. (hereinafter "FDCPA") which prohibits debt collectors from engaging in abusive,
deceptive and unfair practices violation of the New York State General Business Law as
well as the torts of negligence and gross negligence.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. section 1692k(d),
28 U.S.C. section 1337 and supplemental jurisdiction exists for State law claims pursuant
to 28 U.S.C. sections 2201 and 2202 and New York State law. Venue in this District is
proper in that the Defendant transacts business here and the conduct complained of
occurred here.

PARTIES

3. Plaintiff Ronald C. Russo Jr. is a natural person residing in Suffolk County, New York.
4. Plaintiff is a "consumer" as defined by 15 U.S.C. section 1692(a)(3).
5. Defendant Rubin & Rothman LLC is a Domestic Registered Limited Liability Company. Its principal executive office is located at 1787 Veterans Highway, Islandia, New York. Defendant attempts to collect debts alleged to be due another.

FACTUAL ALLEGATIONS

6. On or about February 17, 2011, Defendant Rubin & Rothman LLC sent an initial debt collection letter to Ronald Russo. The Rubin & Rothman letter stated that, "[A]t this time, no attorney with this firm has personally reviewed the particular circumstances of your account." The Creditor was identified as Citibank (South Dakota), N.A. **Exhibit A**.

7. On February 24, 2011, Ronald Russo disputed the validity of the Citibank debt, requested an attorney review the particular circumstances of the account and indicate whether the Citibank account was subject to Arbitration. **Exhibit B**.

8. On March 24, 2011, Rubin & Rothman, LLC provided Mr. Russo with account statements but failed to address whether or not an Arbitration Clause governed

the account at issue and did not indicate whether an attorney had reviewed the account.

Exhibit C.

9. On April 1, 2011, Ronald Russo again requested that an attorney review the account at issue and identify whether an arbitration clause governs the account at issue. **Exhibit D.**

10. On October 12, 2011, Rubin & Rothman sent a letter to Russo which included a Filing Fee and Process Service Charges of \$140.00. **Exhibit E.**

11. On October 18, 2011, Hon. Madeleine A. Fitzgibbon, Supervising Judge, District Court of the County of Suffolk, First District Court, Ronkonkoma scheduled a Status Conference concerning Index Number CEC 3336-11 for December 9, 2011 as a result of the absence of an Affidavit of Service. **Exhibit F.**

12. On November 22, 2011, Citibank, N.A., by and through its counsel, Rubin & Rothman, LLC filed a complaint against Ronald Russo, Index Number CEC-11 012515 while CEC-3336-11 was pending. **Exhibit G**

13. On December 1, 2011, the Honorable Philip Goglas, Dismissed the complaint in Citibank (South Dakota) N.A. v. Ronald Russo for failure to serve process within 120 days. **Exhibit H.**

CAUSES OF ACTION UNDER THE FDCPA

14. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.
15. Defendant violated 15 U.S.C. sections 1692(d), 1692e, 1692e(3), 1692e(10), 1692f(1), 1692g, and 1692g(b).
16. Defendant Rubin & Rothman violated 15 U.S.C. § 1692d in that it engaged in conduct the natural consequence of which is to harass, oppress and/or abuse the Plaintiff. Defendant's actions include but are not limited to filing two simultaneous complaints against Russo absent attorney review.
17. Defendant violated 15 U.S.C. sections 1692e, 1692e(3), 1692e(5), 1692e(10) and 1692g in that defendant used false, deceptive and or misleading representations and/or means in connection with the collection of a debt, by claiming that it will provide verification of disputed debt, when in fact it ignores basic requests for attorney review and Arbitration information, which would be detrimental to Rubin & Rothman.
18. Defendant violated 15 U.S.C. § 1692d and 1692e(10), in that Russo was compelled to respond to a lawsuit which Rubin & Rothman LLC did not serve.

19. Defendant violated 15 U.S.C. section 1692g(b) by filing two actions on timely disputed debts absent verification of the debt.

CAUSES OF ACTION UNDER NEW YORK GENERAL BUSINESS LAW

20. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.
21. Defendant violated New York General Business Law section 349 et seq. Defendant's violations include, but are not limited to filing an actions against Russo absent an attorney personally reviewing the particular circumstances.
22. Plaintiff suffered actual damages as a result of the Defendant's actions.

NEGLIGENCE AND GROSS NEGLIGENCE

23. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.
24. Defendant's actions and omissions as described herein constitute negligence in that Defendant owed Plaintiff a duty of reasonable care in the collection of alleged debt, said duty was breached and said breach was the proximate cause of damages suffered by Plaintiff.

25. Defendant's actions and omissions described herein constitute gross negligence in that Defendant owed and owes Plaintiff a duty of reasonable care in the collection of the alleged debt, said duty was breached, said breach was the proximate cause of damages suffered by Plaintiff and Defendant's actions and omissions demonstrate a want of scant care and indifference to the rights of Plaintiff. Defendant's actions were willful, malicious and reckless in view of defendant's statement that the Summons and Complaint is not frivolous. Defendant's actions were highly unreasonable and demonstrate an extreme departure from ordinary care.
26. Plaintiff is entitled to punitive damages for the actions and omissions of the Defendant as described.

DAMAGES

27. Because of the acts and omissions of Defendant as described, the Plaintiff has suffered marital discord, financial loss, mental anxiety, emotional suffering, worry, loss of appetite, humiliation, sleeplessness and mental distress. Further, Defendant's acts and omissions are willful, malicious and demonstrative of a reckless disregard for the Plaintiff's rights and well being.

WHEREFORE, Plaintiff respectfully request that judgment be entered against Defendant, for the following:

- a. An Order declaring Defendant's law practice of dunning consumers absent review of disputed debt to violate the Fair Debt Collection Practices Act;
- b. Statutory damages pursuant to 15 U.S.C. section 1692k;
- c. Actual damages;
- d. Statutory damages pursuant to New York General Business Law;
- e. Costs and reasonable attorney's fees pursuant to 15 U.S.C. section 1692k and New York General Business Law;
- f. Punitive damages pursuant to New York law; and
- g. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Abraham Kleinman (AK-6300)
KLEINMAN LLC
626 RXR Plaza
Uniondale, New York 11556-0626
Telephone (516) 522-2621
Facsimile (888) 522-1692

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff demands trial by jury in this action.



Abraham Kleinman

EXHIBIT A

KUBIN & ROTHMAN, LLC

1000 K Street, N.W.
Washington, D.C. 20004-2301
Telephone: (202) 467-4600
Facsimile: (202) 467-4601
E-mail: kubin@kubin.com

1000 K Street, N.W.
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Telephone: (202) 467-4600
Facsimile: (202) 467-4601
E-mail: kubin@kubin.com

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Telephone: (202) 467-4600
Facsimile: (202) 467-4601
E-mail: kubin@kubin.com

EXHIBIT B

U.S. POSTAL SERVICE
U.S. MAIL ADDRESS LABEL
00000000000000000000000000000000

Priority Mail - 011

Christopher J. Ritter
U.S. Postal Service
2000 K Street, N.W.
Washington, D.C. 20580

Christopher J. Ritter - U.S. Postal Service

100-00000000

Christopher J. Ritter - U.S. Postal Service - February 15, 2012 - Friday - Please be advised that I type "W" in the "Priority" box and please have my priority mail addressed to me via the "Priority Mail" box. I do not want the "Priority Mail" box to indicate whether the item is a "Priority Mail" item or a "Standard Mail" item. Thank you.

Christopher J. Ritter


Christopher J. Ritter

EXHIBIT C

RUBIN & ROTHMAN, LLC

the \mathcal{L} and \mathcal{R} components of the \mathcal{L}^2 space. The \mathcal{L} component is the space of functions ψ such that $\psi \in \mathcal{L}^2(\mathcal{X})$ and $\psi(x) = 0$ for all $x \in \mathcal{X} \setminus \mathcal{X}_0$. The \mathcal{R} component is the space of functions ψ such that $\psi \in \mathcal{L}^2(\mathcal{X})$ and $\psi(x) = 0$ for all $x \in \mathcal{X} \setminus \mathcal{X}_1$. The \mathcal{L}^2 space is the direct sum of the \mathcal{L} and \mathcal{R} components.

¹ See, for example, the discussion of the "right to be forgotten" in the European Union's General Data Protection Regulation (GDPR), Article 17(1).

19. *Chlorophytum comosum* (L.) Willd. subsp. *comosum*

THE JOURNAL OF CLIMATE

For the first time in history, the world is faced with the task of saving the environment.

1. *Journal of the American Statistical Association*, 1980, 75, 362-375.

1. *What is the relationship between the two concepts of the state and the nation?*

1776 J. Neurosci., November 1, 2006 • 26(44):1770–1777

EXHIBIT D

RONALD RUSSO
350 Captains Drive
West Babylon, NY 11704

March 31, 2011

Rubin & Rothman, LLC
1787 Veterans Memorial Highway, Suite 32
PO Box 9003
Islandia, NY 11749

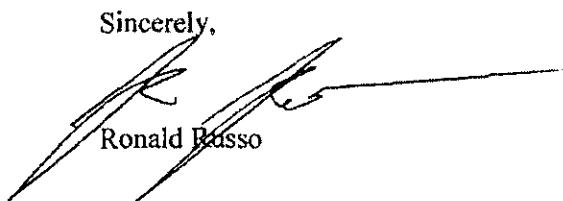
Re: Your File No. 0932099

Dear Sir/Madam:

Thank you for your letter dated March 4, 2011.

Again, enclosed please find a copy of my original letter which requested that you advise whether this Citibank (South Dakota) N.A. debt is subject to an arbitration provision and that an attorney personally review the particular circumstances of this account.

Until such time that I receive information whether there is (a) an arbitration provision and (b) the attorney's name that personally reviewed this account, please continue to mark this matter as disputed.

Sincerely,

Ronald Russo

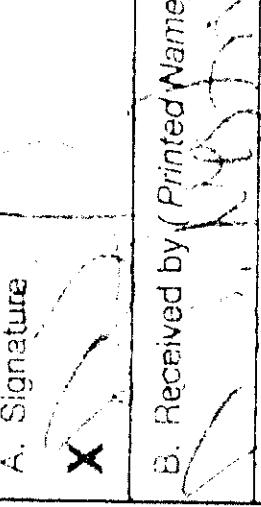
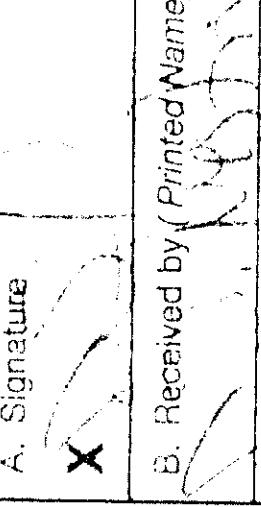
SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Roslyn E. Pernman, LLC
 1787 Veterans Memorial Suite 322
 PO Box 9003
 Tolland, CT 06071

COMPLETE THIS SECTION ON DELIVERY

A. Signature		<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
B. Received by (Printed Name)		C. Date of Delivery
D. Is delivery address different from item 1? If YES, enter delivery address below:		<input type="checkbox"/> Yes <input type="checkbox"/> No

3. Service Type	
<input type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input checked="" type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.
4. Restricted Delivery? (Extra Fee)	
<input type="checkbox"/> Yes	

2. Article Number
(Transfer from service label)

7010 0290 0001 9003 9757

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1546

ISLANDIA NY 11749

\$0.44 0704
\$2.80 0704
\$2.30 0704
\$0.00 0704
\$5.54 04/01/2011

Ryan E Rothman LLC
1787 Veterans Memorial Hwy
Islip, NY 11749
Tel and fax 631-232-0003

2526 0006 7000 0620 0702

EXHIBIT E

EXHIBIT F

SUFFOLK COUNTY FIRST DISTRICT COURT
3105 VETERANS MEMORIAL HWY
RONKONKOMA, NY 11779
NOTICE OF STATUS CONFERENCE

=====

CITIBANK (SOUTH DAKOTA), N.A.

CEC 11 0003336()

VS

RUSSO, RONALD

Please be advised that more than six months has elapsed since the commencement of the above named action. No affidavit(s) of service has/have been filed nor has/have any answer(s) been submitted.

Accordingly you are directed to appear for a Status Conference on 12-09-2011 at 9:30AM in the CIVIL Part located at:

FIRST DISTRICT COURT
3105 VETERANS MEMORIAL HWY
RONKONKOMA, NY 11779

IF YOU FAIL TO APPEAR THE COURT MAY STRIKE THE ACTION FROM THE CALENDAR OR MAKE SUCH OTHER ORDER AS APPEARS JUST. (See Uniform Civil Rules for the District Court 212.14 (b) (3)).

SUCH AN ORDER MAY RESULT IN THE IMMEDIATE DISMISSAL OF THE ACTION LISTED ABOVE

Hon. Madeleine A. Fitzgibbon

Supervising Judge

Dated: October 18, 2011

EXHIBIT G

DISTRICT COURT OF THE COUNTY OF SUFFOLK
FIRST DISTRICT: RONKONKOMA PART
CITIBANK, N.A.

Index No.

CEC-11

012515

Plaintiff

SUMMONS (COPY)

-against-

RONALD RUSSO

The basis of venue is:
DEFENDANT'S RESIDENCE

Defendant(s)

CONSUMER CREDIT TRANSACTION

Plaintiff's Residence:
701 EAST 60TH ST NORTH
SIOUX FALLS, SD 57117
County of MINNEHAHA

To the above named defendant(s):

YOU ARE HEREBY SUMMONED and required to appear in the First District Court of the County of Suffolk, Ronkonkoma Part, at the Office of the Clerk of the said Court at 3105 Veterans Memorial Highway Ronkonkoma, New York 11779, by serving an answer to the annexed complaint upon plaintiff's attorney, at the address stated below, or if there is no attorney, upon the plaintiff, at the address stated above within the time provided by law as noted below; upon your failure to answer, judgment will be taken against you for the relief demanded in the complaint, together with the costs of the action.

Dated: Islandia, New York
NOVEMBER 10, 2011

RUBIN & ROTHMAN, LLC
Attorneys for Plaintiff
1787 Veterans Highway
Islandia, N.Y. 11749
(631) 234-1500

NOTE: The law provides that:

(1) If this summons is served by its delivery to you personally within the County of Suffolk you must appear and answer within TWENTY (20) days after such service; or

(2) If this summons is served by delivery to any person other than you personally, or is served outside the County of Suffolk, or by publication, or by any means other than personal delivery to you within the County of Suffolk, you are allowed THIRTY (30) days after the proof of service thereof is filed with the Clerk of this Court to appear and answer excluding the day of filing.

DEFENDANT(S) ADDRESS:

RONALD RUSSO
350 CAPTAINS DR WEST BABYLON, NY 11704

WE ARE ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.
NYC DCA LIC. 1249720

Our File No. 0932099

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DISTRICT COURT OF THE COUNTY OF SUFFOLK
FIRST DISTRICT: RONKONKOMA PART
CITIBANK, N.A.

Index No.

Plaintiff
-against-
RONALD RUSSO

COMPLAINT (COPY)

Defendant(s)

Plaintiff, by its attorneys, complaining of the defendant(s), alleges:

AS AND FOR A FIRST CAUSE OF ACTION

1. Defendant(s) resides in the county in which this action is brought; or transacted business in the county in which this action is brought in person or through an agent, or this cause of action arose out of said transaction. Plaintiff is not required to be licensed by the NYC Dept of Consumer Affairs because it is a passive debt buyer or the original creditor.
2. Plaintiff is a national bank located in South Dakota.
3. Defendant(s) used a credit card issued by plaintiff and agreed to make payments for goods and services charged and/or cash advances made upon such card.
4. Defendant(s) failed to make the payments due pursuant to such agreement, and \$ 3,920.09 is now due and owing to plaintiff from defendant(s), together with interest on \$ 3,920.09 from 11/08/10 at the rate of .00 % per annum.

AS AND FOR A SECOND CAUSE OF ACTION

5. Defendant(s) accepted plaintiff's statements without objection.
6. By reason thereof, an account was stated between plaintiff and defendant(s) in the aforesaid amount.

WHEREFORE, plaintiff requests judgment against defendant(s) in the sum of \$ 3,920.09, with interest on \$ 3,920.09 from 11/08/10 at the rate of .00 % per annum and the costs and disbursements of this action.

Dated: Islandia, New York
NOVEMBER 10, 2011

RUBIN & ROTHMAN, LLC
Attorneys for Plaintiff
1787 Veterans Highway
Islandia, N.Y. 11749
(631) 234-1500

Deponent is an attorney associated with Rubin & Rothman, LLC. To the best of deponent's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the summons and complaint or the contentions therein are not frivolous as defined in section 130-1.-(c) of the Rules of the Chief Adm. and the matter was not obtained through illegal conduct or in violation of 22 NYCRR 1200.41-a (DR 7-111).

Dated: NOVEMBER 10, 2011

/S/
DAVID KOWALENKO

WE ARE ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

NYC DCA LIC. 1249720

Our File No. 0932099

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51938-

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EXHIBIT H

DC- 88 Order on Motion

Docket/Index No. CEC 3336-11

DISTRICT COURT OF THE COUNTY OF SUFFOLK, FIRST DISTRICT

Present:

HON PHILIP GOGLAS Motion Date NOVEMBER 29, 2011
JUDGE

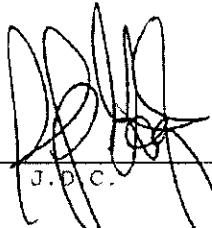
CITIBANK (SOUTH DAKOTA), N.A.
Plaintiff,
AGAINST
RONALD ROSSO
Defendant.

PEO'S/PLTF'S/PET'S ATTY;
DEFT'S/RESP'S/ATTY:

Upon the following papers numbered 1 to 2 read on this motion by defendant
to dismiss for failure to serve process within 120 days after filing the
summons and complaint Notice of Motion/Order to Show Cause and supporting
papers 1 Notice of Cross Motion and supporting papers ;
Answering Affidavits and supporting papers ; Replying Affidavits and
supporting papers ; Filed papers Other exhibits 2 (and after hearing
counsel in support of and opposed to the motion) it is,

ORDERED that this motion is granted without opposition and the complaint is
dismissed (UDCA § 411).

Dated: DEC 1 2011
Mailed: DEC 06 2011


J.D.C.
HON. PHILIP GOGLAS